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Uniform Reciprocal Enforcement of Support Act in Missouri

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Comments

UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT IN MISSOURI

I. Introduction

In 1950 the National Conference on Uniform State Laws approved the Uniform Reciprocal Enforcement of Support Act. It was designed to enable a dependent in one state to secure money for support from a person who is legally liable for the support of the dependent, but who is residing in another state. The act proved to be basically sound and has been such a valuable mechanism for enforcing the duty of support that today every state and territory of the nation has adopted the act or one substantially similar.

Missouri adopted the act,[1] as originally drafted, in 1951. Continued study by the National Conference resulted in recommended revisions which have been incorporated, for the most part, into the act by the Missouri General Assembly.

Although the act is basically sound, courts have found problems either in construing its provisions or in reconciling it with already existing state law. Some of these problems and the manner in which different courts have disposed of them are here presented.

A basic understanding of the procedure is necessary to evaluate fairly the solutions suggested. As an example, suppose husband, H, goes to Texas, leaving wife, W, and child, C, without any means of support in Missouri, but fully intending to send money regularly. Once in Texas H sends a few checks for small amounts, but he soon finds other uses for his money, and W and C are left unprovided for. W investigates, and discovers H is living in Dallas and has a good job. W may then file a petition in the local Missouri circuit court alleging that H owes her and C a duty of support and that H is now residing in a certain county in Texas. The Missouri court considers the petition and determines that H probably does owe W and C a duty of support. The petition is certified and sent, along with a copy of the Missouri act, to the appropriate Texas court. Upon receipt of the petition, the Texas court takes the necessary steps to obtain jurisdiction of H or his property, holds a hearing, and if it finds that a duty of support does exist it will order H to furnish the support. A copy of the order is sent back to the Missouri court. To enforce the order, the Texas court may require H to furnish bond, or more likely, to make periodic payments to the court, which will transmit the payments to the Missouri court, which, in turn, will forward them to W and C.

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1. §§ 454.010-.360, RSMo 1959.

II. Civil Enforcement

The Reciprocal Enforcement of Support Act is primarily a civil proceeding, but to retain the threat of extradition over one who would avoid the civil provisions of the act, criminal provisions were included.[2] It would seem that the criminal portion does not violate the constitutional requirement of confrontation in criminal cases because in an enforcement of this section the defendant will be extradited to complainant's jurisdiction where he will be confronted with the witnesses against him.[3]

A. *Constitutionality*

There are several areas, however, in which the constitutionality of the civil portion of the act might be challenged.

The first of these areas stems from the constitutional provision that "no state shall, without the consent of Congress . . . enter into any agreement or compact with another state . . . ."[4] At least one writer has concluded that even if this act should be construed as an "implied" compact, the constitutional provision is generally held to require congressional consent only when the subject matter of the act either increases or decreases the political power expressly granted to Congress.[5] Thus, the agreements and compacts that violate the constitution are those effecting the "just supremacy of the United States . . . or its political integrity . . . or interference with sovereign treaty making powers and other situations not pertinent here."[6] This was the approach taken by our court in *Ivey v. Ayers*.[7] It was there said:

> There is nothing in the Missouri Act which requires or contemplates an agreement or compact with another state, and insofar as the Act is concerned no agreement or compact has ever been entered into. Missouri has never agreed with any other state what the duties of the defendant should be as to the support of his dependents, and she is free to repeal the Act at any time. There is no "formation of any combination tending to the increase of political power in the states, which may encroach upon or interfere with the just supremacy of the United States," which condition has been held to be essential to an agreement or compact requiring the consent of Congress.

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2. §§ 454.050-.060, RSMo 1959.

3. Freeman v. Freeman, 226 La. 410, 76 So. 2d 414 (1954); Commonwealth *ex rel.* Shaffer v. Shaffer, 175 Pa. Super. 100, 103 A.2d 430 (1954). These cases also point out that the act is primarily a civil proceeding, in which no right of confrontation exists.

4. U.S. Const. art. 1, § 10.

5. Brockelbank, *Is the Uniform Reciprocal Enforcement of Support Act Constitutional?*, 17 Mo. L. Rev. 1, 3 (1952).

6. Landes v. Landes, 1 N.Y.2d 358, 135 N.E.2d 562, *appeal dismissed*, 352 U.S. 948 (1956).

7. 301 S.W.2d 790 (Mo. 1957). See also Bruce, *The Compacts and Agreements of the States With One Another and With Foreign Powers*, 2 Minn. L. Rev. 518 (1918).

> Assuming that the Missouri Act constitutes a compact with another state, it does not increase or decrease political power, and therefore it is not void but at most voidable. There has been no objection from Congress, and we do not anticipate that there will be.[8]

Furthermore, the consent of Congress to agreements between states usually may be inferred from silence and acquiescence. The best answer, however, would seem to be that the act is not a compact between the states enacting it. There is no agreement and no part of the text can be construed as offering or agreeing to do anything.[9]

The second ground on which the act might be challenged is that a state legislature may not delegate its law making authority. The act as finally adopted in 1951 provided:

> Duties of support enforceable under this chapter are those imposed or imposable under the laws of any state where the alleged obligor was present during the period for which support is sought or where the obligee was present when the failure to support commenced, at the election of the obligee.[10]

Although never litigated in this state, it was arguable that the provisions of sections 454.040 and 454.070,[11] which together created a duty of support under the laws of the state where the obligee was present when the failure to support commenced, was a delegation of legislative power to the legislature of the other state. Whatever the validity of this possible objection, the General Assembly settled the problem in 1959 by limiting the duty of support to that imposable under the laws of the state where the obligor was present during the period for which support is sought.[12] Thus a court will ordinarily be applying its own law when ordering the delinquent parent to support his family, because the test of the applicable law is the presence of the obligor.

The last sentence of section 454.070 was added "to take care of the cases where the obligee does not know the whereabouts of the obligor or where the obligor defaults or simply has property subject to the jurisdiction of the court."[13] It provides that: "The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown."[14] Certainly, however, no obligor can complain that such a rebuttable presumption deprives him of a constitutional right, when, indeed, he has the privilege of choosing for his future residence a state with a law favorable to him.[15]

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8. 301 S.W.2d 790, 794 (Mo. 1957).
9. Brockelbank, *supra* note 5, at 2.
10. § 454.070, RSMo 1957 Supp.
11. §§ 454.040-.070, RSMo 1957 Supp.
12. § 454.070, RSMo 1959.
13. BROCKELBANK, INTERSTATE ENFORCEMENT OF FAMILY SUPPORT 28 (1960).
14. § 454.070, RSMo 1959.
15. For an argument to the effect that this change makes certain states "Nevadas of support," see Ehrenzweig, *Interstate Recognization of Support Duties*, 42 CALIF. L. REV. 382, 388 (1954). *But cf.* BROCKELBANK, INTERSTATE ENFORCEMENT OF FAMILY SUPPORT 28 (1960).

It might be asked whether the act is unconstitutional because of indefiniteness. One author has written that since the act "creates no new offenses, and employs no vague and indefinite terms lacking a standard of application," it cannot be questioned on this score simply because it has omitted details of procedure.[16] This issue was not raised in the *Ivey* case.[17] However, in *State ex rel. Schwartz v. Buder*,[18] prohibition was brought to restrain a circuit court from hearing a cross-bill for divorce filed by the husband in a proceeding brought under the Uniform Support of Dependents Law. In holding that the act provided clearly and definitely for the procedure to be followed, the court said:

> Chapter 454 is unquestionably a special procedure statute.
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> All of the civil provisions of the chapter relate to adjudging and collecting the support money for the dependents. The act provides that the action be initiated in the state of the family or dependents and sent to the courts of the state where the husband resides. The court of the responding state is then required under Section 454.120, V.A.M.S., to do the five following things: "(1) Docket the cause; (2) Notify the prosecuting attorney; (3) Set a time and place for hearing not less than ten days nor more than thirty days; (4) Serve upon the obligor copy of said copies at least five days before the day set for hearing; (5) Hear evidence, submitted by petitioner and obligor and make and render such *orders and judgments as the court adjudges should be made under the provisions of this act or discharge the obligor.*"
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> The Act makes various provisions for the civil enforcement of support, even to providing for the arrest of the husband under certain conditions. Sec. 454.115, V.A.M.S. It is therefore completely devoted to the sole question of compelling support. It provides the special procedure. . . .[19]

Thus, at least the St. Louis Court of Appeals considered the procedure sufficiently definite, considering the limited scope of the act.

In a California support proceeding a similar contention was urged by a husband whose wife had obtained an ex parte divorce decree that gave her custody of their child.[20] The husband contended that since there had never been a prior

16. Brockelbank, *supra* note 5, at 12. For the omitted details of procedure, see Harmon v. Harmon, 160 Cal. App. 2d 47, 324 P.2d 901 (2d Dist. Ct. App. 1958) (definition of duty of support); Pousson v. Superior Court, 165 Cal. App. 2d 750, 332 P.2d 766 (4th Dist. Ct. App. 1958) (responding state to obtain jurisdiction of defendant or his property); Whittlesey v. Bellah, 130 Cal. App. 2d 182, 278 P.2d 511 (2d Dist. Ct. App.), *cert. denied*, 350 U.S. 821 (1955), and Lambrou v. Berna, 154 Me. 353, 148 A.2d 697 (1959) (no provision for cross examination); Allain v. Allain, 24 Ill. App. 2d 400, 164 N.E.2d 611 (1960) (no provision for notice to defendant of hearing in the initiating state); Duncan v. Smith, 262 S.W.2d 373 (Ky. Ct. App. 1953) (no definition of court or petitioners representative); Kirby v. Kirby, 338 Mass. 263, 155 N.E.2d 165 (1959) (initiating state makes a finding that a duty of support may be owed, and that responding court may obtain jurisdiction of defendant); State *ex rel.* Schwartz v. Buder, 315 S.W.2d 867 (St. L. Ct. App. 1958) (counterclaim on a collateral issue); *Ex parte* Helms, 152 Tex. 480, 259 S.W.2d 184 (1953) (allowance of attorney's fees).

17. Ivey v. Ayers, *supra* note 7.

18. 315 S.W.2d 867 (St. L. Ct. App. 1958).

19. *Id.* at 869.

20. Harmon v. Harmon, 160 Cal. App. 2d 47, 324 P.2d 901 (2d Dist. Ct. App. 1958).

court order regarding support, the duty of support as defined in the act was so vague and indefinite that "men of common intelligence must guess at its meaning."[21] The court held that section 1653(1), defining duty of support as including "any duty of support imposed or imposable by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial separation, separation maintenance or otherwise,"[22] and section 1670, which provided that "duties of support enforceable under this title are those imposed or imposable under the laws of any state where the alleged obligor was present during the period for which support is sought or where the obligee was present when the failure to support commenced, at the election of the obligee,"[23] were not so vague and indefinite as to be unconstitutional.[24]

In *Duncan v. Smith*,[25] a Kentucky case, the reference in the act to the "court" and "personal representative" of the responding state was held to mean the "appropriate courts and legal officers in other states having a similar law."[26] The defendant also contended that it was not clear whether the petitioner's representative was required to act for resident petitioners as well as nonresident petitioners. Although the Uniform Support of Dependents Law was then in force in Kentucky,[27] the holding that the personal representative "has the duty to act 'in every proceeding pursuant to this chapter,' which would include proceedings instituted both by residents and nonresidents"[28] would appear to be the proper interpretation of the same language in the Uniform Reciprocal Enforcement of Support Act.[29]

Two other constitutional objections often raised are that the act violates the due process clauses of both the federal and state constitutions in that there is no requirement of notice to the obligor of the proceeding before the court in the initiating state, and that the defendant is not afforded an opportunity to cross-examine the obligee concerning matters contained in her testimony before the foreign state court and offered as evidence against him.[30] Both of these objections appear to have been settled in Missouri by the *Ivey* case.[31]

In that case the divorced wife, residing in Virginia, filed her petition in the Juvenile and Domestic Relations Court in Richmond, Virginia, alleging that the defendant was the father of her ten year old son, that he had failed to provide

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21. *Id.* at 905.
22. CAL. CIVIL PROC. CODE § 1653(1).
23. CAL. CIVIL PROC. CODE § 1670.
24. Harmon v. Harmon, *supra* note 20, at 52, 324 P.2d at 905.
25. 262 S.W.2d 373 (Ky. Ct. App. 1953).
26. *Id.* at 376.
27. KY. REV. STAT. § 407.100 (1960).
28. Duncan v. Smith, *supra* note 25, at 376.
29. § 454.020, RSMo 1959. For authority that the two acts are intended to serve the same purpose and should be granted reciprocal operation see Smith v. Smith, 131 Cal. App. 2d 764, 281 P.2d 274 (4th Dist. Ct. App. 1955); Hodges v. Hodges, 108 N.Y.S.2d 286 (Dom. Rel. Ct. 1951); Commonwealth *ex rel.* Shaffer v. Shaffer, *supra* note 3.
30. Annot., 42 A.L.R.2d 768, 777 (1955).
31. Ivey v. Ayers, *supra* note 7.

support for the son for the past five years, that the support needs of the son amounted to fifteen dollars per week, and that the defendant resided in Macon County, Missouri. To the defendant's objection that neither the Missouri nor the Virginia act required notice to be given him of the Virginia proceeding, the court answered that the simple filing of the petition did not result in any adverse judgment or action taken against the defendant. The court also held that the findings of the Virginia court "constitute no more than recommendations to the court of the responding state, and the final decision and the only judgment to be made must be by the court of the responding state."[32] The action of the Virginia court merely enabled the petitioner to submit her claim without the necessity of her personal presence. The court further observed that this situation is no more a denial of due process than where there is no required notice "to a defendant that an ordinary civil suit is to be filed against him in the circuit court of the county in which he resides."[33]

The act does not contemplate an initial adversary type hearing.[34] Nor does it contemplate personal service on the defendant in the state where the suit is commenced.[35] The court's actions in the initiating state are confined to finding probable cause, viz., an ex parte determination by the court that the allegations warrant further proceedings and that the defendant or his property may be within the responding state's jurisdiction.[36] Thus, since the findings of the court in the initiating state constitute only recommendations, and since it acts merely to enable the obligee to submit her claim against the defendant, without the necessity of her personal presence, to the jurisdiction of the court of the responding state, due process does not require notice to be given to the defendant.[37]

Other courts have generally held that the finding of the initiating court is in no way evidentiary as to defendant's liability.[38] Therefore, the determination of a duty to support can be made only by the court having personal jurisdiction over the defendant,[39] on evidence presented before it.[40]

The defendant in the *Ivey* case also contended that he was deprived of due process "because he was not afforded an opportunity to cross-examine the plaintiff concerning matters contained in her testimony taken before the court in Virginia and offered as evidence in the proceeding in the Missouri court."[41] The court

32. *Supra* note 7, at 796.
33. *Ibid.*
34. Allain v. Allain, *supra* note 16, at 406, 164 N.E.2d at 616.
35. Allain v. Allain, *supra* note 16, at 406, 164 N.E.2d at 615; Dean v. Dodge, 220 Ark. 853, 857, 250 S.W.2d 731, 733 (1952).
36. Kirby v. Kirby, *supra* note 16, at 269, 155 N.E.2d at 169.
37. Dean v. Dodge, *supra* note 35; Allain v. Allain, *supra* note 16; Rosenburg v. Rosenburg, 152 Me. 161, 125 A.2d 863 (1956); Mahan v. Read, 240 N.C. 641, 83 S.E.2d 706 (1954).
38. *E.g.*, Pfueller v. Pfueller, 37 N.J. Super. 106, 108, 117 A.2d 30, 32 (App. Div. 1955).
39. Lyons v. Lyons, 75 Nev. 495, 346 P.2d 709 (1959).
40. Carpenter v. Carpenter, 231 La. 638, 647, 92 So. 2d 393, 396 (1956).
41. Ivey v. Ayers, *supra* note 17, at 796.

answered simply that the Missouri act does not require such testimony to be introduced as evidence or even considered by the Missouri court.

> Section 454.120(5) requires no more than that the court of the responding state shall hear evidence submitted to it by the plaintiff and defendant, and Section 454.190 requires that the court shall be bound by the same rules of evidence as are used in circuit courts. The offer, or even the erroneous acceptance of improper evidence does not result in the invalidity of the act under which the proceeding is being held on the basis that there is a denial of due process of law. The acceptance of improper evidence is a matter to be corrected on appeal. Neither the Missouri or Virginia Act requires notice to defendant of the proceedings before the court of the initiating state, and we therefore need not decide if the testimony of the plaintiff taken before the Virginia court would be admissible in the court in Missouri if notice to defendant was required and given. The testimony of plaintiff in the Virginia court which was offered as evidence in the Missouri court was taken ex parte, and in view of the requirements of Section 454.190, it has no more legal effect when offered in the Missouri court than an affidavit.[42]

Other courts have pointed out that, even though the plaintiff is not personally before the court, the defendant may protect himself from false allegations in the petition by cross-examining the petitioner through depositions or interrogatories.[43] The trial court, however, must be cautioned not to treat the findings of the initiating court as evidence, unless admitted by the defendant. Clearly the act contemplates that the court "will properly evaluate the proof as to the child's necessities with the ability of the father to pay, and with a judicial discretion that will not penalize the father for not having been able to cross-examine the mother."[44]

In *Duncan v. Smith*[45] it was contended that the provision of the act requiring the county attorney, "a public official, to represent 'private persons in private lawsuits,' constitutes a diversion of public funds for the benefit of private individuals."[46] This argument was based on the Kentucky Constitution, which provides that taxes shall be levied and collected for public purposes only.[47] The court held that providing the services of the county attorney for one who cannot afford private counsel is substantially the same as paying public funds to needy individuals. In fact, it should be less expensive for the state to provide free legal service than to support the needy dependents.

The act has also been challenged on the ground that it is extra-territorial in its application. The contention usually made is that the act purports to give the enacting state's courts jurisdiction outside of the state and other state courts jurisdiction in the enacting state. To use an example, if a petition is filed in a Mis-

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42. *Ibid.*
43. Whittlesey v. Bellah, *supra* note 16; Smith v. Smith, *supra* note 29; Lambrou v. Berna, *supra* note 16.
44. Whittlesey v. Bellah, *supra* note 16, at 185, 278 P.2d at 513.
45. *Supra* note 25.
46. *Supra* note 25, at 377.
47. KY. CONST. § 171. The Missouri Constitution, article X, section 3, contains substantially the same provision.

souri court on behalf of a dependent child, and sent to the court in a Kansas county where the father is living, the Missouri court is allegedly taking personal jurisdiction over a Kansas resident. In reality, however, the Missouri court is merely serving as a local agency of convenience for the Kansas court. The Kansas court will have personal jurisdiction over the father and will enforce only a duty of support imposed by the law of Kansas.[48] While the Kansas court may not have complete technical jurisdiction over the plaintiff in Missouri, "from a practical standpoint it has such jurisdiction over the petitioner as to enable the court to make a binding determination of the petitioner's rights, or to compel the petitioner to meet certain requirements as a condition of being granted the relief sought."[49]

The granting of free legal representation to a dependent person when the obligor is in another state but denying such representation when the obligor is in the same state has been attacked as granting a special privilege. The Kentucky court, in the *Duncan* case, felt the practical difficulties involved in a dependent's securing support from a person residing in another state constituted a valid basis for granting the free legal representation in the one case and denying it in the other.[50] It would also seem that helping compel the father-husband to support his dependents is in furtherance of the general welfare of the public and not merely for the benefit of the dependent.

Although not all the constitutional objections have been passed on by the Missouri courts, it appears that, based on the *Ivey* case and the decisions of other courts, there is no valid constitutional objection of any type apparent on the face of the present act.

B. *Construction*

Section 454.090 provides that "all duties of support are enforceable by action irrespective of the relationship between the obligor and obligee."[51] This provision accomplishes two objectives. First, it overturns the ancient common law principle that one spouse could not sue the other and that a child could not sue its parent. Second, all duties of support, whether statutory or common law, become enforceable in one uniform proceeding. Section 454.020 defines duty of support as including "any duty of support imposed or imposable by law, or any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, legal separation, separate maintenance or otherwise."[52] It was intended that any enforceable duty of support would be within the purview of the act, both as to amounts in arrears and as to amounts owed currently or in the future.[53]

It is generally held that since the act is remedial in nature it should be

48. Duncan v. Smith, *supra* note 25, at 377.
49. *Ibid.*
50. Duncan v. Smith, *supra* note 25, at 378.
51. § 454.090, RSMo 1959.
52. § 454.020(6), RSMo 1959.
53. BROCKELBANK, INTERSTATE ENFORCEMENT OF FAMILY SUPPORT 34 (1960).

liberally construed.[54] It is remedial because its primary purpose is to provide better enforcement of the obligation to support children and wives who have been deserted by the husband or father, and thereby promote and advance the public welfare.[55] However, after all reasonable doubts have been resolved in favor of the applicability of the statute in a particular case, the interpretation must not be inconsistent with the language of the act.[56]

The Missouri courts have followed the general policy of liberally construing the act. In *State ex rel. Watley v. Mueller*,[57] the ex-wife was seeking 4,125 dollars for accrued support due her under a separation agreement and an order for future support for their two children. The defendant argued that the divorce decree did not order him to make any support payments to the wife or their children and that the plaintiff had no court order, judgment or decree requiring him to make any payments to her. Prior to the divorce the defendant had entered into a separation agreement with the plaintiff in which he gave custody of the children to the plaintiff and promised to make certain support payments to her. The subsequent divorce decree adopted the agreement and ordered the parties to abide by it. The problem before the court was whether the divorce decree was sufficiently final and complete so that the parties could tell with reasonable certainty the extent to which their rights were fixed. The court held that the judgment was sufficient to impose a duty of support as contemplated by the Uniform Act, either on the theory that the separation agreement, which was filed in the divorce court with the pleadings, could be referred to, or that the agreement was incorporated by reference in the divorce decree.[58] The agreement also provided that after one of the children reached majority, either the parties would agree on the amount to be paid for the support of the younger child, or that a court would adjudicate the question. This was also held not to render the judgment invalid, for the agreement provided for all contingencies.[59]

Frequently there are disagreements as to what duties of support are enforceable. To carry out the purpose of the act, *i.e.*, to provide support for distressed dependents, the language of the act that "any duty of support is enforceable" should be read literally. Thus, even where there has been no prior adjudication or agreement of the duty to support, recovery may be had for past support furnished by the wife.[60] But if the purpose of the act will not be effectuated by a literal reading of the statute, the court will likely find a different construction of the language. Where a Missouri court had granted a divorce decree and ordered 75 dol-

54. Illinois *ex rel.* Shannon v. Sterling, 248 Minn. 266, 80 N.W.2d 13 (1956).
55. State *ex rel.* Whatley v. Mueller, 288 S.W.2d 405, 409 (St. L. Ct. App. 1956).
56. *Id.*, citing State *ex rel.* Brown v. Board of Educ., 294 Mo. 106, 242 S.W. 85 (1922) (en banc).
57. *Supra* note 55.
58. *Accord*, Smith v. Smith, *supra* note 29; Daly v. Daly, 21 N.J. 599, 123 A.2d 3 (1956); Commonwealth *ex rel.* Shaffer v. Shaffer, 175 Pa. Super. 100, 103 A.2d 430 (1956).
59. State *ex rel.* Whatley v. Mueller, *supra* note 55, at 411.
60. Skinner v. Fascians, 165 Ohio St. 390, 137 N.E.2d 613 (1956).

lars per month support for the two children of the marriage and later increased the support order to 150 dollars per month, in a hearing where the defendant was unable to appear except by counsel, the New Jersey court allowed the defendant five months to seek a modification of the Missouri order.[61] Although the modified order was thought to be too high, the court felt that it could not modify it in the absence of special circumstances. Thus, the defendant's only remedy was to appear before the Missouri court and ask for a modification of the judgment. But, as if to recommend a modification to the Missouri court, the New Jersey decree was for 150 dollars per month, with leave to the defendant to pay only 130 dollars per month for five months, during which time he could petition the Missouri court for a reduction of the support order.[62]

Absent the Reciprocal Enforcement of Support Act, a problem may arise if there is in existence a prior order of support. If the prior support order was rendered in another state, the traditional procedures for enforcing such an order have been described as "intolerable."[63] Since the full faith and credit clause requires only that a final money judgment be honored,[64] a support order rendered in a sister state will not be enforced as a local decree because most divorce and support orders are non-modifiable only as to past due installments.[65] In this situation the obligee must wait until sufficient payments have accrued to make it worthwhile for her to go to the obligor's state where she can obtain personal jurisdiction and bring a suit at law. Add to this the fact that most states will not permit the obligee to ask for a modification of the order as to future payments,[66] and the "intolerable" description seems justified. The trend, however, now appears to be to enforce a foreign support decree with leave to the obligor to ask for a modification of the order if there has been a change of circumstances.[67]

The act has been fairly successful in meeting this problem. If the responding state determines that a duty of support exists under its laws, it may order the obligor to pay support, either in the amount of the foreign order or a different amount.[68] But if the judgment is not shown to be final and non-modifiable as to past due installments, some courts will not enforce collection of such payments. In the *Coumans* case, the New Jersey court refused to grant the judgment full faith and credit until the Missouri court made the order final and non-modifiable. This situation prompted the Committee on Reciprocal Enforcement of Support to report in 1958 that:

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61. Coumans v. Albaugh, 36 N.J. Super. 308, 115 A.2d 641 (Juv. and Dom. Rel. Ct. 1955).
62. *Ibid.*
63. EHRENZWEIG, CONFLICTS OF LAW 258 (1959).
64. Sistare v. Sistare, 218 U.S. 1 (1910).
65. Ives v. Ives, 247 Ala. 689, 26 So. 2d 92 (1946); Stilley v. Stilley, 219 Ark. 813, 244 S.W.2d 958 (1952); Weidman v. Weidman, 274 Mass. 118, 174 N.E. 206 (1931).
66. Biewend v. Biewend, 17 Cal. 2d 108, 109 P.2d 701 (1941); Espeland v. Espeland, 111 Mont. 365, 109 P.2d 792 (1941).
67. Worthley v. Worthley, 44 Cal. 2d 465, 283 P.2d 19 (1955); 20 MONT. L. REV. 874, 878 (1959); 1956 WASH. U.L.Q. 246.
68. Coumans v. Albaugh, *supra* note 61.

> Experience has shown that many courts have interpreted the act to include only actions for current support. This has been true despite constant efforts of the Council of State Governments and the chairman of your committee to call attention to Section 2(f),[69] which defines duty of support as that "imposed or imposable by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, legal separation, separate maintenance or otherwise."[70]

It has been suggested that the theory of the commissioners was that past due installments are as much a duty of support as future installments and should be enforced.[71] There still remains the argument, however, that where the support order was not entered in the responding state the order is of no special interest to that state and should not be enforceable under principles of conflict of laws.[72]

In a well reasoned decision, the California Supreme Court held that the act has rejected this doctrine and that in a suit pursuant to the act, a court not only must "recognize and enforce foreign alimony and support decrees whether modifiable or not," but also "must afford the defendant an opportunity to litigate the issue of modification."[73] If the court in such a case modifies the decree and enters a judgment for a liquidated sum for the past due installments, the judgment is final and is thereafter entitled to full faith and credit in any state.[74] As to future installments, the order is enforceable as long as the circumstances remain unchanged.[75] The dissenting judge in the California case felt that the act does not require that a foreign retroactively modifiable decree be enforced. In his opinion the act provides merely that the court make an initial determination of the amount of support owed and give credit for any amount paid under the foreign order.[76]

Prior to this case, California courts had enforced prospectively modifiable orders as they stood, until they were modified in the rendering state.[77] Today, however, it is generally conceded that although the court is not constitutionally bound to enforce a modifiable order,[78] neither is it forbidden from enforcing one.[79] In fact, the Supreme Court recently has refused to say whether or not a modifiable judgment must be given full faith and credit.[80] In the instant case the California

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69. § 454.020(b), RSMo 1959.

70. NATIONAL CONFERENCE OF COMM'RS ON UNIFORM STATE LAWS. REPORT TO THE COMMITTEE ON THE UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT 4 (1958).

71. Kelso, *Reciprocal Enforcement of Support: 1958 Dimensions,* 43 MINN. L. REV. 875, 881 (1959).

72. RESTATEMENT, CONFLICT OF LAWS § 458, comment *a* (1934).

73. Worthley v. Worthley, *supra* note 67, at 471, 283 P.2d at 24.

74. *Ibid.*

75. *Ibid.*

76. Worthley v. Worthley, *supra* note 67, at 473, 283 P.2d at 26 (dissenting opinion).

77. Biewend v. Biewend, *supra* note 66, at 112, 109 P.2d at 704.

78. Sistare v. Sistare *supra* note 64; Barber v. Barber, 62 U.S. (21 How.) 186 (1858).

79. State *ex rel.* Halvey v. Halvey, 330 U.S. 610 (1946).

80. Griffin v. Griffin, 327 U.S. 220, 234 (1946); Barber v. Barber, 323 U.S. 77, 81 (1944).

court felt that by enforcing the modifiable decree, with leave to the defendant to litigate the question of modification, it would be serving the best interests of the parties. Thus neither party would be required to return to the state of rendition to seek a modification of the order, nor would a plaintiff living away from the rendering state have to return to that state and reduce her claim to a money judgment in order to collect back support money.

> Furthermore, there is no merit to the contention that as a matter of practical convenience the issue of modification should be tried in the courts of the state where the support decree was originally rendered. Proof of changed circumstances in support cases is no more difficult than in custody cases and . . . a California court that has jurisdiction of the subject matter must undertake to adjudicate a plea for modification of custody rights established by a sister-state decree. . . . Moreover, in most states the problem of modification is dealt with according to general equitable principles, and the law of the state in which the support obligation originated can be judicially noticed. . . .[81]

Another situation that often arises is one in which a divorce decree is granted in one state and an action is brought at a later time in another state for support of dependent children. If there was no mention of child support in the original decree, a court in the second state may properly grant a support order.[82] If there was an award of support in the divorce decree, the defendant may be ordered to pay additional support.[83] But, although the results of the decisions in this area are generally in agreement, the theories upon which they are grounded differ. In a recent Illinois case the defendant affirmatively pleaded compliance with the support provisions of a Minnesota divorce decree.[84] On appeal the defendant argued that because the Minnesota decree should be given full faith and credit, the court could not order additional support without finding a change in circumstances. The Illinois court conceded that the decree should be entitled to full faith and credit, even though it might be modifiable as to future installments. It was that court's view, however, that a grant of additional support did not constitute a modification or change of the provisions of a foreign divorce decree awarding child support. In granting additional support, the court looked only to see whether the defendant was providing reasonable support for his dependents, taking into account any amount of support money which the defendant might be paying under the Minnesota decree. An Iowa court, on the other hand, recognized that there is authority for holding that a responding court either may or may not enter a new order of support, but apparently dissatisfied with the prior arguments for either position, examined several provisions of the act and concluded that "a reasonable interpretation of the act fairly shows that it was intended to give an additional remedy, in the application of which the respondent court might make

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81. Worthley v. Worthley, *supra* note 67, at 474, 283 P.2d at 25.
82. Hartshorn v. Hartshorn, 21 Ill. App. 2d 91, 157 N.E.2d 563 (1959).
83. Despain v. Despain, 78 Idaho 185, 300 P.2d 500 (1957); Allain v. Allain, 24 Ill. App. 2d 400, 161 N.E.2d 611 (1960).
84. Allain v. Allain, *supra*.

its own determination of the needs of the petitioning party and make such order as justice might require."[85] Other courts have reached the same result by finding that the foreign support order was not entitled to full faith and credit, thus leaving the court free to decree whatever support it thought proper under the circumstances.[86]

Can the responding court modify a foreign support decree without a showing of changed circumstances? At least one court has held that it can.[87] This, however, is contrary to the established view that a foreign support decree is entitled to full faith and credit and is therefore res judicata, *unless* there has been such a change in circumstances that the rendering court would modify the decree.[88] Thus, to modify the decree without a change in circumstances is, in effect, holding that the foreign decree is not entitled to full faith and credit. In support of this approach it may be said that, in ordering support, a court should be concerned only with what is a fair and reasonable sum for support in that state, and not with what was thought reasonable by another court under different support laws.[89] However, in view of the weight of authority that foreign support orders are entitled to full faith and credit,[90] it is at least questionable whether other courts will adopt this reasoning.

A father may not by contract relieve himself of his duty to support minor children. Thus, a divorce decree incorporating a separation agreement providing that the wife should provide the sole support for their children can not be a bar to a suit for support of the dependent child.[91] Similarly, where an obligor is

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85. Moore v. Moore, 107 N.W.2d 97 (Iowa 1961); noted in 47 IOWA L. REV. 173 (1961).

86. Potter v. Potter, 131 Colo. 14, 278 P.2d 1020 (1955). Jennings v. Howard, 56 F. Supp. 193 (E.D. Mo. 1944), indicates that the Missouri courts will give full faith and credit to a foreign support order. Whether they will adopt the liberal rule of the *Worthley* case and allow the defendant to litigate the issue of modification whenever a foreign support order is sought to be enforced against him remains to be seen. It would seem that they should.

87. Allain v. Allain, *supra* note 83.

88. Coumans v. Albaugh, *supra* note 61.

89. Bachman v. Mejias, 154 N.Y.S.2d 903, 1 N.Y.2d 575, 136 N.E.2d 866 (1956); Benedict v. Benedict, 203 Misc. 286, 115 N.Y.S.2d 352 (Dom. Rel. Ct. 1952). *But see,* Whittlesey v. Bellah, 130 Cal. App. 2d 182, 278 P.2d 511 (2d Dist. Ct. App.), *cert. denied,* 350 U.S. 821 (1955).

90. Kovacs v. Brewer, 356 U.S. 604 (1958); Yarborough v. Yarborough, 290 U.S. 202 (1933).

91. In Barfield v. Harrison, 101 Ga. App. 497, 114 S.E.2d 302 (1960), the mother initiated suit in Virginia against the father in Georgia, for support of their minor child. The father pleaded a separation agreement, later incorporated into a divorce decree, which provided that the mother should have permanent custody and that she would "support, maintain, educate, and care for the child." 101 Ga. App. at 498, 114 S.E.2d at 303. The court held that under the act "a father continues liable for support of his children and no decree made since the effective date of such act for the support of children, entered in any divorce proceeding is a final and unalterable adjudication precluding a later adjustment. . . ." *Ibid.* In *Smith v. Smith* an alleged agreement relieving the father of the duty of supporting his daughter was held to be of no effect. "A parent may not by any act, conduct, or arrangement of whatever sort shift from his shoulders the legal responsibility

ordered to make support payments in addition to those which he is already paying under a foreign support decree, such order does not modify the original decree.[92] Thus the obligee may recover unpaid past installments of a divorce decree even though the obligor is presently complying with a support decree rendered in a suit under the Uniform Act.[93]

What if, after a separate maintenance order is issued, the husband obtains an ex parte divorce in which no mention of alimony or support is made? It seems clear that the duty to support the wife survives the divorce, as the court does not have jurisdiction over the wife and cannot terminate her right to support.[94] Apparently, then, the original separate maintenance decree can be enforced, but leave should be granted to both parties to litigate the issue of modification.[95]

The jurisdiction obtained pursuant to this act does not confer jurisdiction upon the court to permit a counterclaim for divorce, separation or annulment.[96] To allow such a counterclaim would be to "compel a mother, claiming support for her children, to defend such divorce action in a place far removed from her domicile."[97]

To prevent defeat of the expeditious character of the act, Missouri, in 1959, adopted section 454.270. It provides that no proceeding brought under the act "shall be stayed because of the existence of a pending action for divorce, separation, annulment, dissolution, *habeas corpus* or custody proceeding."[98] Otherwise, the dilatory acts of the defendant or a crowded court docket could delay a much needed support order. Before this provision was adopted in 1959, the St. Louis Court of Appeals had held that the Buchanan County Circuit Court, which had granted a divorce and support decree, had exclusive and continuing jurisdiction over the children's support and maintenance and that a St. Louis county circuit court did not have jurisdiction to issue a support order in favor of the plaintiff then living in Iowa.[99] The plaintiff relied on section 454.030, which provides that "the remedies herein provided are in addition to and not in substitution for any other remedies."[100] The court held that the purpose of the act, including section 454.030, was to preserve to the wife all remedies available to her before, plus those provided for in the act. It was said, however, that

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and moral duty to support his minor child. It is an absolute, inalienable right enjoyed by the child which no form of contract between the parents, nor change of the domestic status of either of them, may effect." 125 Cal. App. 2d 154, 164, 270 P.2d 613, 621 (2d Dist. Ct. App. 1954). *Accord,* Smith v. Smith, 131 Cal. App. 2d 764, 281 P.2d 274 (4th Dist. Ct. App. 1955); Laws v. People, 59 Colo. 562, 151 Pac. 433 (1915).

92. Section 454.030, RSMo 1959, provides: "The remedies herein provided are in addition to and not in substitution for any other remedies."

93. Despain v. Despain, *supra* note 83.

94. Gohdes v. Gohdes, 134 Cal. App. 2d 819, 286 P.2d 539 (4th Dist. Ct. App. 1955).

95. Worthley v. Worthley, *supra* note 67.

96. State *ex rel.* Schwartz v. Buder, 315 S.W.2d 867 (St. L. Ct. App. 1958).

97. *Id.* at 870.

98. § 454.270, RSMo 1959.

99. Welch v. McIntosh, 290 S.W.2d 181 (St. L. Ct. App. 1956).

100. § 454.090, RSMo 1959.

> it certainly was not contemplated that a plaintiff, after having availed herself of the remedies provided by the divorce statutes of this state, could thereafter proceed in a court of concurrent jurisdiction in this state to enforce the same rights involved in the first action. Such a construction of the Act would result in confusion and be violative of the well settled principle that a court should not take jurisdiction of a matter which is properly involved in a proceeding pending in another court of concurrent jurisdiction.[101]

Since section 454.270 was enacted after the case was decided, it is not clear whether the statute has superseded the doctrine of the case. If the court meant to restrict its holding to the situation where another court of the state has granted a divorce and support decree to the parties and has retained jurisdiction over the case, the amendment probably did not, even though it should, supersede the decision. But, if the holding is broad enough to include the situation where an action is pending in another court of the state, the amendment does supersede the case. The language quoted from the case seems to indicate that the latter situation was to be included.

It is submitted that the act should be applicable in both situations. Otherwise the defendant can defeat the purpose of the act by moving to a distant part of the same state that previously issued a support decree.

What seems to be the proper result has been reached by the Florida Supreme Court.[102] In that case the wife obtained a Florida divorce in county A, and subsequently moved to Connecticut. The husband moved to county B and became delinquent in his support payments. When the wife proceeded under the act to have the support decree enforced in county B, the circuit court dismissed the petition, saying that the divorcing court was the proper forum to enforce the decree. The supreme court reversed, finding that:

> [T]here is no difference, in principle, in enforcing the duty of support decreed by a sister state and in enforcing the duty when decreed by a court of this state, especially since it appears to be the *duty* of support imposed by a divorce or separate maintenance decree (as distinguished from the amount of the support so decreed) that is enforced by the responding state under the Act in question.[103]

It should be noted, however, that even if the court of defendant's residence is permitted to take jurisdiction of the suit, the decree sought to be enforced is a "local" decree, with full effect throughout the state. Thus, whether the court can *modify* the "local" decree seems questionable.[104]

III. Criminal Enforcement

Sections 454.050 and 454.060[105] provide for the extradition of a resident of Missouri charged with the crime of non-support in another state. The first section

101. Welch v. McIntosh, *supra* note 99, at 184.
102. Thompson v. Thompson, 93 So. 2d 91 (Fla. 1957).
103. *Id.* at 93.
104. Briggs, *Need for Adoption of 1958 Amendment to the Uniform Reciprocal Enforcement of Support Act*, 20 Mont. L. Rev. 40, 43-44 (1958).
105. §§ 454.050,.060, RSMo 1959.

provides that the Governor of Missouri may demand the return to this state of a person charged with the crime of failure of support, or that he *may* surrender such a person to another demanding state. The last two sentences of that section read:

> The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or other state.[106]

Professor Brockelbank has suggested that this portion of the statute is of special significance, because:

> These free the extradition procedure from the necessity of stating or showing that the person whose surrender is demanded was in the demanding state at the time of the commission of the crime or had fled therefrom.[107] They are especially desirable in all cases of desertion and non support. Without them it would be necessary to show that the defendant, before leaving the demanding state, had deserted and had already formulated an intention not to support his family. In most cases this is either not true or impossible to prove. It is rare that a man's intention is clear. Frequently he may leave the state with little or no intention other than to seek work, and only after the emotional ties to his family have been loosened does he determine to desert and not to support them. Thus these provisions become almost indispensable in the support cases.[108]

The validity of the criminal provisions of the act has not been passed upon by an appellate court in Missouri. It has elsewhere been upheld against the objection that a father who has merely failed to provide for support of his dependents in another state is not a fugitive who has committed an *act* in the demanding state which would authorize his extradition.[109] This is because the duty to sup-

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106. § 454.050, RSMo 1959.

107. Professor Brockelbank at this point listed the following footnote:
8. These provisions were inspired by the non-general text of Section 6 of the Uniform Criminal Extradition Act which has been adopted in forty states. The latter Act has been held constitutional in *Ex parte* Morgan, 78 F. Supp. 756 (S.D. Cal. 1948); State *ex rel.* Giddar v. Kriss, 191 Md. 568 (1948); People *ex rel.* Faulds v. Herberich, 93 N.Y.S.2d 272 (2d Dep't 1948), *aff'd* 301 N.Y. 614, 93 N.E.2d 913 (1949); Cubbertson v. Sweeney, 70 Ohio App. 344, 44 N.E.2d 807 (1942), *Appeal dismissed,* 140 Ohio St. 426, 45 N.E.2d 118 (1942); English v. Matomitz, 148 Ohio St. 39, 72 N.E.2d 898 (1947); *In re* Action, 90 Ohio App. 100, 103 N.E.2d 577 (1949); *Ex parte* Dalton, 56 N.M. 407, 244 P.2d 790 (1952); *Ex parte* Bledsoe, 93 Okla. Crim. App. 302, 227 P.2d 680 (1951); *Ex parte* Coleman, 245 S.W.2d 712 (Tex. Cr. 1952). . . .

108. Brockelbank, *Relief From Extradition Under the Uniform Reciprocal Enforcement of Support Act,* 19 Mo. L. Rev. 191, 192 (1954). For a contrary view as to the wisdom of providing for extradition, see 37 N.D.L. Rev. 423, 425 (1961).

109. Harrison v. State, 38 Ala. 60, 77 So. 2d 384 (1955); Matthews v. People, 136 Colo. 102, 314 P.2d 906 (1956); *In re* Harris, 170 Ohio St. 151, 163 N.E.2d 762 (1960).

port one's minor children exists universally, and the mere *failure* to do so constitutes a crime.[110] In finding the necessary criminal element to support an extradition order, one court fairly expressed the general attitude of the courts toward a non-supporting father when it said that "when the law requires one to act, *e.g.*, to support his children, his willful failure to do so is as much an act, albeit an act of omission, as if he literally took food from their mouths or physically carried them from shelter and left them abandoned and unsheltered."[111]

By the same token, the defendant need never have been in the demanding state; it is sufficient if he has constructively committed a crime there by failing to provide support. For example, in *Harrison v. State*[112] the defendant had gone to Tennessee in 1953, married his wife, and returned to Alabama. The Alabama court held that the defendant was not entitled to be released on a writ of habeas corpus even though he had not been in Tennessee at any time since the child was born. In so holding, the court noted that Alabama may, in the exercise of its sovereign powers and as an act of comity to Tennessee, provide by the Reciprocal Enforcement of Support Act for the surrender of a person indictable for a crime committed through his constructive presence in Tennessee, even though he was not in Tennessee when the duty to support the child arose and had not fled therefrom to escape arrest and punishment. Thus the authority to extradite a person for the crime of non-support, even though he was not present in the demanding state at the time of the commission of the crime charged, and has not fled therefrom, is valid and enforceable.

The question might arise as to whether the Uniform Extradition Law, adopted in 1953 by the General Assembly,[113] repeals that portion of section 454.050[114] which provides that the defendant need not have fled from the demanding state. The Extradition Law states that the defendant must have been "present in the demanding state at the time of the commission of the alleged crime."[115] Another section, however, provides that the defendant is subject to extradition even though he was not present in the demanding state, if he *intentionally* committed an act that resulted in a crime in that state.[116] A Texas court solved this problem by holding that the legislative intent indicated "that extradition in non-child-support cases was to be governed by the provisions of the Support Act in so far as presence of the accused in the demanding state was concerned rather than by the provision of the Extradition Act relative thereto."[117] In effect, then, it was held that the Extradition Act did not repeal the Support Act. This appears to be the proper result.

To the contention that the obligor has not "intentionally" failed to provide support, it may be answered that whether it was willful or intentional goes to the

110. *In re* Harris, *supra.*
111. *In re* Harris, *supra* note 109, at 158, 163 N.E.2d at 768.
112. *Supra* note 109.
113. §§ 548.011-.300, RSMo 1959.
114. § 454.050, RSMo 1959.
115. § 548.031, RSMo 1959.
116. § 548.061, RSMo 1959.
117. *Ex parte* Coleman, 157 Tex. Crim. 37, 40, 245 S.W.2d 712, 715 (1951).

merits of the charge, and should not be inquired into by the state of the obligor's residence.[118]

The second section dealing with criminal sanctions was repealed in 1959, and a completely new section was adopted.[119] The old section had been construed by two courts as allowing an obligor to relieve himself from extradition by initiating an ex parte support proceeding before a court in the responding state.[120] Two other courts reached a more desirable result by construing the same section to mean that the obligor must be complying with a support order *initiated by the obligee.*[121] The interpretation of the two former courts would allow the recalcitrant obligor to purchase his freedom by untruthfully informing the judge as to either his ability to pay or as to the obligee's needs. The latter courts are insuring that they will hear both sides of the story. In any event, the present provision (if adopted) would appear to leave no doubt that the obligor cannot defeat extradition by instituting his own support proceeding.[122]

The obligor is not left without protection, however. The Governor of Missouri need not demand extradition of an obligor from another state until sixty days after the obligee has brought a support action, unless it can be shown that it would be useless to bring such an action.[123] When a demand is made on the Governor of Missouri for the surrender of a person living in Missouri, extradition may be delayed by the Governor until he is satisfied that a suit for support has been brought, or that it would be useless to bring one, or that an action was brought but that

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118. Harrison v. State, *supra* note 109; *Ex parte* Gilbreath, 311 S.W.2d 851 (Tex. Crim. App. 1958). *Contra,* Matthews v. People, 136 Colo. 102, 314 P.2d 906 (1957).

119. § 454.060, RSMo 1957 Supp. (old); § 454.060, RSMo 1959 (new).

120. Jackson v. Hall, 97 So. 2d 1 (Fla. 1957); Lefler v. Lefler, 218 Ore. 231, 344 P.2d 754 (1959).

121. *Ex parte* Floyd, 43 Cal. 2d 379, 273 P.2d 820 (1954); Sands v. Sands, 136 N.E.2d 747 (Ohio C.P. 1956).

Professor Brockelbank reports that Missouri, in response to a questionnaire sent out by the Council of State Governments, has expressed the attitude that an extradition request should not be honored unless the civil remedy under the reciprocal procedure has first been attempted, or unless the obligor has violated an enforceable order entered in the demanding state. Brockelbank, *supra* note 108, at 18 n.30.

122. For a general discussion of criminal enforcement under the act, see Brockelbank, *Relief from Extradition Under the Uniform Reciprocal Enforcement of Support Act,* 19 Mo. L. Rev. 191 (1954).

The practice of allowing an ex parte support order in the responding state has been critized by Professor Brockelbank as being unwise and unconstitutional. He contends that it is unwise "because it permits an obligor to purchase a cheap immunity from extradition and to the same extent it short changes the destitute family." Brockelbank, Interstate Enforcement of Family Support 20 (1960). In other words, the court is not apt to get accurate information from the obligor, either because he is dishonest, or because he is uninformed. It is said to be unconstitutional because to determine the amount of support owed to the absent obligee "without notice . . . and an opportunity to be heard is a violation of the due process clause of the fourteenth amendment." *Id.* at 22. For a contrary view, see 37 N.D.L. Rev. 423, 425 (1961).

123. § 454.060(1), RSMo 1959.

the obligor prevailed in the action.[124] Also, if an action for support has been brought and the obligor is complying with that order, any demand for extradition may be denied.[125]

IV. Registration

In 1959 the Missouri legislature amended the act to provide for the registration and enforcement of foreign support orders.[126] Now an obligee may register a foreign support order by filing in the state of defendant's residence[127] a verified petition setting forth the amount remaining unpaid and a list of states in which the order is registered.[128] The obligee must also attach to the petition a certified copy of the support order which includes any modifications thereof.[129] After obtaining jurisdiction over the obligor or his property the court may confirm the order; or, if the obligor appears, the court may adjudicate the issues, including the matter of amounts remaining unpaid.[130] The obligor may assert any defenses available to any defendant in an action on a foreign judgment.[131] If the order is confirmed, it has the same effect as if originally entered in the confirming state.[132]

It has been suggested that the new registration procedure furnishes a method of avoiding any controversy which might otherwise arise if arrearages were sought

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124. § 454.060(3), (4), RSMo 1959.
125. § 454.060(5), RSMo 1959.
126. Section 454.300, RSMo 1959: "The obligee may register the foreign support order in a court of this state in the manner, with the effect and for the purposes herein provided."
Section 454.310, RSMo 1959: "The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders."
Section 454.320, RSMo 1959: "The petition for registration shall be verified and shall set forth the amount remaining unpaid and a list of any other states in which the support order is registered and shall have attached to it a certified copy of the support order with all modifications thereof. The foreign support order is registered upon the filing of the petition subject only to the subsequent order of confirmation."
Section 454.330, RSMo 1959: "The procedure to obtain jurisdiction of the person or property of the obligor shall be as provided in civil cases. The obligor may assert any defenses available to a defendant in an action on a foreign judgment. If the obligor defaults, the court shall enter an order confirming the registered support order and determining the amounts remaining unpaid. If the obligor appears and a hearing is held, the court shall adjudicate the issues including the amounts remaining unpaid."
Section 454.340, RSMo 1959: "The support order as confirmed shall have the same effect and may be enforced as if originally entered in the court of this state. The procedures for the enforcement thereof shall be as in civil cases."
127. Of course, the foreign decree may be registered in a state where the obligor has property subject to attachment, if the obligee is willing and desires to proceed in an in rem action to collect for support.
128. § 454.030, RSMo 1959.
129. § 454.030, RSMo 1959.
130. § 454.330, RSMo 1959.
131. § 454.330, RSMo 1959.
132. § 454.340, RSMo 1959.

to be collected.[133] If the obligor or his property is in another state when the divorce or support decree is rendered, registration of that decree in the foreign state will give the obligee a local judgment, so that any unpaid installments will immediately become debts. The same procedure should be followed with regard to any modification of the decree.

There are no reported cases construing this portion of the act, but there seem to be several inherent problems that may arise.

If the obligee registers the decree in another state for the purpose of collecting past due installments, the obligor might contend that the "registered" support order has the effect of being rendered on the date of confirmation by the registering court. Thus, only payments accruing thereafter could be collected. As one author has stated, however:

> [I]n as much as the general policy for aid in interpreting the act evidenced throughout the act is the protection of obligees, and [sections 454.300-340 were] designed to better that protection, the phrase "originally entered"[134] should be interpreted as relating back to the date the order was entered in the state where it was originally entered.[135]

The obligor might also contend, if his state of residence refuses to enforce modifiable foreign support orders, that since he may assert "any defense available to a defendant in an action on a foreign judgment,"[136] he should be able to assert the same defense to the registration of the judgment. However, to protect the policy of the act, it must be assumed that the drafters intended that registration be available in all states, regardless of a state's policy as to enforcing modifiable foreign orders. Thus, only the following defenses, which go to the validity of the judgment, should be allowed: (1) that in the original action the court lacked jurisdiction; (2) payment; (3) satisfaction or release of the original support order; (4) the statute of limitations; and (5) fraud in obtaining the original order.[137]

A recent Illinois case allowed the registration of a modifiable Missouri divorce and support decree.[138] Although the decree was registered under the Illinois Enforcement of Foreign Judgments Act,[139] that act and the registration provisions of the Support Act are so similar in language and purpose that a court should give the same effect to both. In holding that the lower court erred in failing to register the Missouri decree as an Illinois judgment as to future payments, the Illinois court stated:

> Policy considerations argue strongly that such decrees are entitled to full faith and credit. Unless they receive interstate recognition, the insulated

133. Kelso, *Reciprocal Enforcement of Support: 1958 Dimensions,* 43 MINN. L. REV. 875, 883 (1959). See also notes 63-90 *supra* and accompanying text.
134. § 454.030, RSMo 1959.
135. Kelso, *supra* note 133.
136. § 454.330, RSMo 1959.
137. Kelso, *supra* note 133, at 884. *E.g.,* Weiler v. Weiler, 331 S.W.2d 165 (K.C. Ct. App. 1956) (divorce suit, allowing the husband to show the wife's fraud in obtaining a prior Illinois divorce).
138. Light v. Light, 12 Ill. 2d 502, 147 N.E.2d 34 (1957).
139. ILL. REV. STAT. ch. 77, §§ 88-105 (1959). See § 511.760, RSMo 1959.

> judicial systems of the several states may become sanctuaries within which obligations that have been fully and fairly adjudicated in another jurisdiction may be escaped. These policy considerations have found expression in the decisions of many State courts which, on the grounds of comity, have given full effect, including equitable enforcement, to foreign decrees awarding alimony in the future.[140]

The question as to whether a registering court will allow the judgment to be *modified* during the registration proceeding also remains undecided. It appears that since the foreign decree becomes a local decree upon registration,[141] it should be treated as if originally rendered by the registering court, and a *later* action for modification by either party should be allowed. However, it would be much simplier and less expensive if the decree could be modified at the time it is registered. Even though the act provides only that the support order and a statement of the amounts remaining unpaid accompany the request for registration, this would not appear to foreclose the possibility of the obligee including in her petition for registration a statement of change in circumstances entitling her to an upward modification of the support order. Likewise, since the decree will now be a local decree, the obligor should be allowed to assert a change in circumstances entitling him to a reduction in support payments.

Professor Kelso, in contending that the registering court should allow the issue of modification to be litigated in a registration proceeding, has stated:

> If the registering state adopts the view of *Worthley* that in an action to enforce a foreign judgment the parties may develop the modification issue, modification downward would be a type of defense available to the defendant in an action on a modifiable support judgment—a defense which *Worthley* assumes is constitutionally indicated. As to modifications upward, since in order to permit registration the registering state will have jurisdiction over the obligor or his property, there is no constitutional objection to permitting the obligee to join with the petition for registration a petition for modification upward. The court could then consolidate the two matters, hear evidence pertaining both to defenses on the judgment and to modification, confirm the judgment, including amounts unpaid, then modify the judgment and order the obligor to comply with the judgment as modified. This would carry forward the purposes of the act and is well within the procedural flexibility of equity.[142]

An advantage of using the registration procedure rather than the ordinary two-state proceeding to enforce a duty of support is that the registered judgment, being a local judgment rendered with jurisdiction over both parties, should be res judicata in other states. This result is foreclosed in the two-state procedure by section 454.280, which provides:

> No order of support issued by a court of this state when acting as a responding state shall supersede any other order of support but the

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140. Light v. Light, *supra* note 138, at 510, 147 N.E.2d at 39.
141. Mangold v. Mangold, 294 S.W.2d 368 (K.C. Ct. App. 1956).
142. Kelso, *supra* note 133, at 885.